but a vesting of a contingent reversionary interest retained by the federal government in the granting of a pension to a pensioner.

The trial court found that Warpouske was mentally incompetent to contract, that no valid contract had been effected under the provisions of 38 U.S.C. 17-17j and that, except for the unexpended pension funds, the decedent's estate escheated to the state for the benefit of the Common School Fund (R. 22-25). The Oregon Supreme Court affirmed the trial court and held that the federal act was not operative when applied to the estate of Adam B. Warpouske (R. 49).

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① ORS 120.010 provides:

"Immediately upon the death of any person who dies intestate without heirs, leaving any real, personal or mixed property, interest or estate in this state, the same escheats to and vests in the state, subject only to the claims of the creditors and as provided in ORS 120.060 to 120.130; and the clear proceeds derived therefrom shall be paid into and become a part of the Common School Fund of this state and be loaned or invested by the State Land Board, as provided by law."

② 38 U.S.C. (1952 Ed.) § 450 provided in pertinent part:

"*Payments to minors, mental incompetents, or persons under legal disability.*

"(1) Where any payment of compensation, adjusted compensation, pension, emergency officers' retirement pay, or insurance under any Act administered by the Veterans' Administration is to be made to a minor, other than a person in the military or naval forces of the United States, or to a person mentally incompetent, or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian, curator, or conservator by the laws of the State

of residence of claimant, or is otherwise legally vested with the care of the claimant or his estate: *Provided*, That where in the opinion of the Administrator any guardian, curator, conservator, or other person is acting as fiduciary in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the wards, the Administrator is authorized to refuse to make future payments in such cases as he may deem proper: *Provided, further*, That prior to receipt of notice by the Veterans' Administration that any such person is under such other legal disability adjudged by some court of competent jurisdiction, payment may be made to such person direct: *Provided further*, That where no guardian, curator, or conservator of the person under a legal disability has been appointed under the laws of the State of residence of the claimant, the Administrator shall determine the person who is otherwise legally vested with the care of the claimant or his estate.

* * *

"(3) All or any part of the compensation, pension, emergency officers' retirement pay, or insurance the payment of which is suspended or withheld under this section may, in the discretion of the Administrator, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is an inmate nor apportioned to his dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Administrator for the benefit of such beneficiary or his dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to him if he recovers and is found competent, or, if a minor, attains majority, or otherwise to his guardian, curator, or conservator, or, in the event of his death, to his personal representative, except as otherwise

provided by law: *Provided*, That payment will not be made to his personal representative if, under the law of the State of his last legal residence, his estate would escheat to the State: *Provided further*, That any funds in the hands of a guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, derived from compensation, automatic or term insurance, emergency officers' retirement pay, or pension, payable under said Acts, which under the law of the State wherein the beneficiary had his last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Veterans' Administration, and shall be deposited to the credit of the current appropriations provided for payment of compensation, insurance, or pension.

SUMMARY OF ARGUMENT

I

The fact that 38 U.S.C. (1952 Ed.) 17-17j operates contractually is evidenced (1) by the language of the statute, (2) by the legislative history of its enactment, (3) by the great majority of the cases applying the statute, and (4) by the administrative practice.

The language of the statute is phrased in terms of contract, and the acceptance of treatment by a veteran constitutes an acceptance of the conditions of the subchapter giving rise to the legal consequences provided in the statute. Being contractual in nature, the Act necessarily presupposes a mentally competent veteran legally capable of contracting and accepting the conditions of the subchapter if his estate is to become subject to the provisions of the Act and to vest in the United States upon his death intestate and without heirs in the Veterans' facility.

The legislative history of the enactment of 38 U.S.C. 17-17j dispels any lingering doubt as to the contractual nature of the statute and clearly shows that it does not apply to a mentally incompetent veteran legally incapable of entering into an agreement. In the debate on the floor of the House, the chairman of the committee sponsoring the bill[9] clearly and explicitly pointed out that the agreement of an insane veteran "would not amount to anything" and that the legislation "does not apply" to a physically incompetent veteran who was un-

[9] See 87 Congressional Record, 227,3811.

able to agree to anything (87 Congr. Rec. 5202-5204, covering H.R. 4692, 38 U.S.C. 17-17j).

The great majority of cases in both federal and state courts bear out and amply illustrate that the rights of the United States arising under 38 U.S.C. (1952 Ed.) 17-17j are a matter of contract and not a matter of automatic vesting by reason of the self-executing operation of the statute.

Administrative practice, in conformity with the statute, likewise bears out the contractual nature of the statute by incorporating into the veterans' application for admission to the veterans' facility an agreement or acknowledgment of the conditions and provisions of the statute.

II

In view of the clear and unmistakable legislative intent that the statute operates contractually and does not apply to an insane veteran or a physically incompetent veteran unable to agree to anything, petitioner's second question as to the power of Congress to provide for the self-executing operation of the statute in relation to the Fifth and Tenth Amendments becomes moot and hypothetical. As a rule this Court does not pass upon constitutionality when presented by a hypothetical question or situation. Nevertheless, the power to legislate concerning probate and the succession to property of decedents has traditionally been recognized as a power reserved to the states by the Tenth Amendment. Because of the contractual nature of the statute, no Fifth

Amendment problem may be involved inasmuch as the "conclusive presumption" provision of the statute does not become operative as to mentally incompetent or incapacitated veterans unable to contract.

ARGUMENT

I

The statute, 38 U.S.C. (1952 Ed.) 17-17j, is not one of escheat or the control of who shall receive a decedent's property, but one providing for contract. No valid contract can be effected by a mentally incompetent person, and, therefore, no valid contract arose under the statute with respect to this mentally incompetent veteran.

That 38 U.S.C. (1952 Ed.) 17-17j is founded upon contract is evidenced by the following:

(1) The language of the statute is couched in terms of contract; (2) the legislative history of the enactment of the bill recognizes the contractual nature of the legislation; (3) a practically unanimous line of judicial decisions in both federal and state courts has held the statute to be founded upon contract or as creating a contractual relationship; and (4) the administrative practice of the Veterans' Administration, in conformity with the statute, has accorded it a contractual operation.

(1) *Language of the Statute.* In pertinent part 38 U.S.C. (1952 Ed.) 17-17j, Act of June 25, 1910, 36 Stat. 736, as amended by the Act of December 26, 1941, 55 Stat. 868 (as it appeared in the U. S. Code) provided:

"§ 17. *Vesting of undisposed personalty in United States as trustee for General Post Fund.*

"Effective ninety days after December 26, 1941, whenever any veteran (admitted as a veteran) shall die while a member or patient in any facility, or any hospital while being furnished care or treatment therein by the Veterans' Administration, and shall not leave surviving him any spouse, next of kin, or heirs entitled, under the laws of his domicile, to his personal property as to which he dies intestate, all such property, including money and choses in action, owned by said decedent at the time of death and not disposed of by will or otherwise, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund, a trust fund prescribed by section 725s (b)(45) of Title 31.

"The foregoing provisions are conditions precedent to the initial, and also to the further furnishing of care or treatment by the Veterans' Administration in a facility or hospital. *The acceptance of care or treatment* by any veteran admitted as such to any Veterans' Administration facility or hospital after ninety days from December 26, 1941, and *as well the continued acceptance of care or treatment* furnished by the Veterans' Administration after said ninety days by any veteran who is then receiving the same *shall constitute an acceptance of the provisions and conditions of this subchapter and have the effect of an assignment, effective at his death, of such assets in accordance with and subject to the terms and provisions of this subchapter and the regulations issued in accordance with and pursuant thereto.* (Emphasis supplied)

"§ 17a. *Presumption from death in facility of contract for disposition of property.*

"The fact of death of the veteran (admitted as such) in a facility or hospital, while being furnished

care or treatment therein by the Veterans' Administration, leaving no spouse, next of kin, or heirs, shall give rise to a conclusive presumption of a *valid contract for the disposition in accordance with this subchapter, but subject to its conditions*, of all property described in section 17 of this title owned by said decedent at death and as to which he dies intestate. (Emphasis supplied)

* * *

"§ 17c. *Disbursements from Fund; payment of creditors.*

"Disbursements from the General Post Fund shall be made by the Division of Disbursements, Treasury Department, upon the order and within the discretion of the Administrator of Veterans' Affairs for the benefit of members and patients while being supplied care or treatment by the Veterans' Administration in any facility or hospital, and this authority is not limited to facilities or hospitals under direct administrative control of the Veterans' Administration: *Provided, however*, That there shall be paid out of the assets of the decedent so far as may be the valid claims of creditors against his estate that would be legally payable therefrom in the absence of this subchapter and without the benefit of any exemption statute, and which may be presented to the Veterans' Administration within one year from the date of death, or within the time, to the person, and in the manner required or permitted by the law of the State wherein administration, if any, is had upon the estate of the deceased veteran; and also the proper expenses and costs of administration, if any: *And provided further*, That if the decedent's estate be insolvent the distribution to creditors shall be in accordance with the laws of his domicile, and the preferences and priorities prescribed thereby shall govern, subject to any applicable law of the United States.

"§ 17d. *Disposition of remainder of assets; acquisition of assets by the Administrator of Veterans' Affairs.*

"The remainder of such assets or their proceeds shall become assets of the United States as trustee for said Post Fund and disposed of in accordance with this subchapter. If there be administration upon the decedent's estate such assets, other than money, upon claim thereof within the time required by law, shall be by the administrator of the estate delivered to the Administrator of Veterans' Affairs or his authorized representative, as upon final distribution; and upon the same claim there shall be paid to the Treasurer of the United States for credit to said Post Fund any such money available for final distribution. In the absence of administration, any money, chose in action, or other property of the deceased veteran held by any person shall be paid or transferred to the Administrator of Veterans' Affairs upon demand by him or his duly authorized representative, who shall deliver itemized receipt therefor. Such payment or transfer shall constitute a complete acquittance of the transferor with respect to any claims by any administrator, creditor, or next of kin of such decedent.

* * * *

"§ 17g. *Notice to veterans of law.*

"The Administrator of Veterans' Affairs *shall prescribe a form of application for hospital treatment* and domiciliary care which *shall include notice of the provisions of this subchapter.* Within ninety days after approval hereof similar *notice shall be given to each veteran then receiving care in any facility or hospital* as described in this subchapter: *Provided, however,* That this requirement shall be met by *posting of said notice with a copy of the prescribed form in a prominent place* in each building wherein patients or members are housed." (Emphasis supplied)

* * *

An examination of this statute discloses that the vesting of personalty of such veteran is intended to be founded upon contract. The statute is couched in the language of the contract. Section 17 speaks of the "acceptance" of treatment as the "acceptance" of the provisions and conditions of the subchapter. Section 17g directs the Administrator of Veterans' Affairs to provide a form of application for hospital treatment which shall include notice of the provisions of the subchapter (Subchapter II, comprising §§ 17-17j), and further provides, as to veterans already in a veterans' hospital or facility, for posting of notice of the provisions of the statute in the building where the veterans are housed. The obvious purpose of these provisions is to lay the foundation for contract which may be accepted by veterans entering the hospital by the execution of the application for admission, or, as to patients already in a hospital, by remaining and accepting further treatment.

Section 17a further bears out the contract intention of the statute. This section provides for a presumption of "contract" arising out of the fact of death of a veteran receiving treatment in a veterans' hospital, subject to the "conditions" of the subchapter. Since the creation of the presumption is subject to the conditions of the subchapter, this section must be read together with the other provisions of the subchapter and in relation to the law of contract generally. A valid contract can arise only where a person is legally capable of contracting, and the presumption of contract under this section must

necessarily presuppose a person legally competent to contract.

Just as under the Oregon Revised Statutes, 41.350 (3), relating to conclusive presumptions, the recitals in a written instrument between the parties thereto are conclusive, nonetheless it may be shown that one of the parties was mentally incompetent.[©] A deed, contract or will by a mentally incompetent person is regarded as void and without legal effect. *Dexter v. Hall*, 82 U.S. 20, 21 L. Ed. 73, 77; *Beach v. United States*, 226 U.S. 243, 57 L. Ed. 205; *German Savings & Loan Society v. De Lashmutt*, 67 F. 399 (C.C., D. Or. 1895). The conclusiveness of recitals in the writing fails with the want of mental capacity of the person executing the writing.

Again, there is a question whether a legislative attempt to make a rule of conclusive evidence compulsory upon the judiciary, in an area where it would normally be the duty of the court to examine the evidence, may not be regarded as an attempt to infringe upon the exclusive province of the judiciary. IV Wigmore on Evidence, § 1353, p. 716.

Moreover, the provisions of 38 U.S.C. § 17 use this language:

"* * * The *acceptance of care or treatment*

[©] ORS 41.350 (3) provides:

"The following presumptions, and no others, are conclusive:

"(3) The truth of the facts recited from the recital in a written instrument, between the parties thereto, their representatives or successors in interest by a subsequent title; and this rule does not apply to the recital of a consideration."

by any veteran admitted as such to any Veterans' Administration facility or hospital after ninety days from December 26, 1941, and as well the continued acceptance of care or treatment furnished by the Veterans' Administration after said ninety days by any veteran who is then receiving the same *shall constitute an acceptance of the provisions and conditions of this subchapter* and have the effect of an assignment, effective at his death, of such assets in accordance with and subject to the terms and provisions of this subchapter and the regulations issued in accordance with and pursuant thereto." (Emphasis supplied)

From this provision it appears that it is the "acceptance of care" which constitutes "an acceptance of the provisions and conditions of this subchapter." Accordingly, it is clear that the mental competency of the veteran and his capacity to accept treatment *are* prerequisites to the acceptance of the provisions of the subchapter which in turn give rise to the conclusive presumption of contract.

(2) *Legislative history.* The primary objective in all statutory construction is the determination of legislative intent. In the case at bar the court need not resolve the meaning of the statute without the aid of a reliable extrinsic guide but may turn to the legislative history of the Act in the determination of its legislative intent. Here the history of the enactment of the bill provides a detailed and explicit account of the debate in Congress, with answers by the chairman of the committee sponsoring the bill concerning its intent, purpose and application.

The precise question here presented to this Court—

whether the statute applies to a mentally incompetent veteran—was specifically answered by Congressman Rankin, the chairman of the sponsoring committee. He clearly pointed out there "cannot possibly be any conflict" [between the federal law and state escheat laws] "because the veteran agrees to this arrangement when he enters the hospital" and that if the veteran were insane his "agreement would not amount to anything." Again, when asked if the legislation would apply to a physically incompetent veteran who might be picked up and was unable to agree to anything when he entered the hospital, Mr. Rankin replied: "If he does not agree, then this does not apply."

In order to give the debate its setting in context and to show the purpose of the bill and the understanding of the members of Congress, we quote in pertinent part at length from 87 Congr. Rec. 5202-5204, covering 38 U.S.C. 17-17j (H.R. 4692):

> "Mr. RANKIN of Mississippi. Mr. Speaker, when this measure was before the Veterans' Affairs Committee we have the Administrator of Veterans' Affairs before us. *The bill involves only personal property of veterans who die in Veterans' facilities who have no living relatives whatsoever, who die intestate.* A great many of them leave small amounts of personal property that the Veterans' Administration does not know what to do with. There is no objection to it from any veterans' organization. (Emphasis supplied)
>
> * * *
>
> "Mr. VAN ZANDT. The practice has been in vogue for many years, as far as soldiers' homes are concerned, and if this bill is enacted into law, the

veteran when making application for hospitalization will simply agree to the disposition of his property in case of death and leaves no relatives.

"Mr. RANKIN of Mississippi. The only possible conflict that could arise would be between the State and the Federal Government on the grounds that what little he leaves would escheat to the State, but it would probably cost the State more to handle it than it would be worth, nine times out of ten if not ninety-nine times out of a hundred.

* * *

"Mr. WILLIAM T. PHEIFFER. The bill was before the committee and was gone into quite thoroughly. A great deal is to be said in favor of the bill and I quite agree that something of that sort should take care of the cases the gentlemen mentions. *However, looking at it legalistically, there is a chance of there being a serious conflict in some cases between the State laws and the Federal laws. In practically every State, the property would naturally escheat to the State, where a deceased person dies intestate.*

"Mr. RANKIN of Mississippi. Let me say to the gentleman from New York that *there cannot possibly be any conflict, because the veteran agrees to this arrangement when he enters the hospital. The only exception would be where the veteran is insane. His agreement would not amount to anything in that instance.*

"Mr. WILLIAM T. PHEIFFER. There might be a *case where the veteran is picked up in an incompetent condition, not mentally, but physically, and he had been unable to agree to anything when he entered the hospital.*

"Mr. RANKIN of Mississippi. *If he does not agree, then this does not apply.* But this will take a great deal of grief off of the Veterans' Administration and help dispose of a lot of virtually worthless property that these veterans are leaving in the various hos-

pitals where they pass away. I think if you would take a vote of the veterans of the United States they would practically all agree that this measure should be passed. (Emphasis supplied)

* * *

"Mr. ROBSION of Kentucky. I assume that there are a lot of old suitcases and trunks and other personal property, junk, that has accumulated in great quantities and is taking up space in the veterans' facilities?

"Mr. RANKIN of Mississippi. And there is nobody to receive it except the State, because this *applies only to veterans who have no relatives and who have made no will.* Shall we call on each State to send and get all these old trunks and old suitcases and things like that, merely because in one case out of a hundred there might be a few dollars' worth of property? (Emphasis supplied)

"Mr. ROBSION of Kentucky. And this bill will relieve that situation?

"Mr. RANKIN of Mississippi. This bill will relieve that situation.

* * *

"Mr. ELSTON. Is there anything that might be construed to dispense with the administration of an estate and the payment of taxes?

"Mr. RANKIN of Mississippi. *No; I do not think so, where a veteran makes this agreement when he enters the hospital.* If he has much of an estate, he will not go to the hospital, he will take care of himself. *But where he goes to the hospital and signs this agreement, of course, when he dies his property is disposed of in the way provided in this bill.*" (Emphasis supplied)

This discussion leaves no doubt that the statute was intended to be contractual in operation and that a vet-

eran must be competent and consensually able to agree if the statute were to be applicable to him and his estate. Nothing appears in the legislative history that any member of Congress opposed or disagreed with the views expressed in this debate. The bill was passed without opposition or amendment. See, 87 Congressional Record 3811, 4347, 5850, 5851, 5923, 9706, 9771, 9884, 9886, 9947 and 10130, covering the bill from its introduction to signature by the President.

The general rules as to legislative history in statutory construction are summed up in 2 Sutherland, Statutory Construction, §§ 5011 and 5012. Concerning the statements of a committee in charge of a bill, it is said (p. 503-504):

> "Courts have taken a realistic view of legislative procedure and have excepted from the general rule excluding the use of statements in debate of individual legislators as to the meaning of the bill, the statements of the member of the committee in charge of the bill. His remarks upon presenting the bill to the house and the answers made by him to questions asked by members will be considered by the courts in construing provisions of the bill subsequently enacted into law. These statements are in the nature of supplemental committee reports and are entitled to the same weight accorded formal committee reports."

The rule of accepting as an authoritative guide the unopposed remarks of the sponsoring committeeman and his answers and explanation to the members of Congress or the Legislature is one that has been accorded virtually unanimous approval. This Court has had frequent occasion to resort to legislative history in determining legis-

lative intent and has applied the rule in the recent cases of *Mitchell v. Kentucky Finance Co., Inc.*, (1959) 359 U.S. 290, 294, 3 L. Ed. (2d) 815, 819, 79 S. Ct. 756; *Flora v. United States*, (1958) 357 U.S. 63, 65, 2 L. Ed. (2d) 1165, 1167, 78 S. Ct. 1079; *National Labor Relations Board v. Lion Oil Company*, (1956) 352 U.S. 282, 292, 1 L. Ed. (2d) 331, 339, 77 S. Ct. 330.

From the legislative history of the Act, it is very clear that the federal act is not operative when applied to the estate of a deceased incompetent veteran as in this case.

(3) *Judicial decisions holding the statute founded upon contract.* The decided cases in both federal and state courts bear out and amply illustrate that the rights of the United States arising under 38 U.S.C. (1952 Ed.) 17-17j are founded upon contract and that the personal property of a veteran dying intestate and without heirs in a veterans' facility is not a matter of escheat, or automatic vesting in the federal government as contended by petitioner.

In the case of *Re Witte's Estate*, 174 Kan. 300, 255 P. (2d) 1039, 1044, the federal government's own argument was to that effect as follows:

> "Its [United States'] principal argument however is that the statute is not one of escheat or of the control of who shall receive a decedent's estate, but *one providing for a contract, and that it bases its claim on a contract* authorized by and executed under the statute. In support it relies principally on United States v. Stevens, 302 U.S. 623, 58 S. Ct. 388, 82 L. Ed. 484. * * *" (Emphasis supplied)

The case of *United States v. Stevens*, 302 U.S. 623, 82 L. Ed. 484, 487, 488, relied upon in the Witte case, likewise illustrates that the claim of the United States under the statute was one of contract:

> "There is no ambiguity in the contract or in the Act which authorized it. * * * (p. 487)
>
> "The *contract*, however, is valid under the applicable state law. * * * (p. 488)
>
> "The claim of the Government *is based on a contract* between the veteran and the Home. * * * *Both parties were competent to make the contract.* This contract is valid and enforceable * * *" (p. 488) (Emphasis supplied)

Again, in *United States v. Security-First National Bank of Los Angeles*, (Cal. 1955) 130 F. Sup. 521, 522, it appears that the government rested its claim upon contract:

> "* * * The Government claims that on the death of Morris, it became the owner of this deposit *by virtue of a contract between the deceased and the Veterans Administration* * * *." (Emphasis supplied)

The veteran in the foregoing case, upon admission to the Veterans' Administration hospital, had executed an application for hospital care which carried a footnote reference to 38 U.S.C. 17-17j, stating in effect that the application was made with notice of the provisions of the statute. The court questioned the effectiveness of the footnote, saying:

> "No party has challenged the validity of this agreement on the ground that there was no agree-

ment as to the footnoted matter, and although a footnote to an application for admission to a hospital is not an exemplary way to establish privity of contract, in the absence of challenge, it is sufficient. Considering that applicants for domiciliary care in a hospital are usually sick and often lacking acute mental perception, the force of a footnote to the entry application (the footnote purporting to create a special contract of unusual character) might be considerably diminished, and frequently destroyed by a careful inquiry into the circumstances of the execution of the application for domiciliary care. * * *" (p. 522)

In view of the circumstances of Warpouske's hospitalization, the comments on the foregoing case are particularly pertinent.

That the rights of the United States arising under 38 U. S. C. 17-17j are founded upon contract has been repeatedly recognized, as is illustrated by the following further cases: *Mauck v. United States*, 94 F. (2d) 745; *O'Connell v. United States*, 37 F. Sup. 832; *In re McGhee's Estate*, 268 N.Y.S. 79; *United States v. Brown*, 110 F. Sup. 370; *United States v. Gallagher*, 97 F. Sup. 1014; *United States v. Essex Trust Co.*, 44 F. Sup. 476; *Abbott v. Morgenthau*, 93 F. (2d) 242; *United States v. Peoples' National Bank of Chicago*, 121 F. Sup. 331; *United States v. Mid City National Bank*, 121 F. Sup. 402.

An important distinction, however, must be observed between the cases cited and the case at bar, and that is that in the case at bar the decedent not only at the time of his admission to the Veterans' hospital at Portland,

in March 1956, but for many years in the past was mentally incompetent and incapable of contracting.

Among the cases cited by the United States for the self-executing operation of the statute are: *In re Skriziszouski's Estate*, 382 Pa. 634, 116 A. (2d) 841; *In re Gonsky's Estate*, 79 N. D. 123, 55 N.W. (2d) 60; *In re Bonner's Estate*, 192 Misc. 753, 80 N.Y.S. (2d) 122 (Sur. Ct., Queens County).

Before a discussion of these cases, a look at the source of Warpouske's estate is important. His estate consisted primarily of funds derived from the estate of his deceased brother in a net amount of $12,755.67 (R. 4, 28). The balance of the estate, except for personal property of a value of $28, was made up of unexpended federal veterans' pension funds of a net value of $971.47 (R. 28).

Upon learning that a portion of the estate was derived from unused pension benefits, the state immediately relinquished all claim to the pension money, recognizing that such funds were subject to reversion to the federal government under the provisions of 38 U.S.C. (1952 Ed.) § 450, and that their reversion was not a matter of contract but the revesting of a contingent reversionary interest retained by the federal government in the grant of the pension to the pensioner.

The reversion of pension funds is discussed in *In re Lindquist's Estate*, 25 Cal. (2d) 697, 144 P. (2d) 438, and 154 P. (2d) 879, which points out that a pension is not an outright gift and that the term "escheat" used in 38 U.S.C. § 450 is employed in the sense of reversion and

not in its technical sense. The position of the federal government was stated as follows (144 P. (2d) 438, 440):

> "* * * It is admitted that the federal government has no power to pass laws regulating succession to property by citizens of the states, that being a power reserved by the Tenth Amendment to the states.
>
> "The appellant contends that the word 'escheat' as used in the statute does not have the technical, limited meaning urged by the respondents; that when the statute is read as a whole it has a broader meaning; that the obvious purpose, intent and meaning of the statute is that the federal government has not made the gift of a pension absolute and complete, but has retained in itself a contingent reversionary interest—that is, if the pensioner die possessed of any portion of the gift, and if he has not by will disposed of the interest, and if under the laws of the state the gift would otherwise escheat to the state, then the reversionary contingent interest of the federal government will vest."

We recognize that pensions are gratuities which Congress may grant, condition or withhold and that the reversionary interest retained by the federal government is a qualification upon the pension grant.

Among the cases cited by petitioner for the proposition that 38 U.S.C. 17-17j is self-executing is *In re Bonner's Estate*, (1948) 80 N.Y.S. (2d) 122. This effect attributed to the statute in the Bonner case is based largely upon authority of *Abbott v. Morgenthau*, (C.A., D.C. 1937) 93 F. (2d) 242. But a reading of the Abbott case discloses that the decision in the Bonner case rests more upon judicial fiat and misapprehension of the Abbott

case than upon the basis of that decision or sound principles of law.

The single question in the Abbott case was whether accumulated pension moneys credited to an insane pensioner admitted to a soldiers' home after passage of the 1902 Act, predecessor of 38 U.S.C. § 450, but prior to the 1910 predecessor of 38 U.S.C. 17-17j, were payable to the Post Fund. The court held the 1902 Act governed the pension funds and expressly recognized that the 1910 Act was based upon contract (93 F. (2d) at 244):

> "* * * Congress confined the terms of the new act [1910] expressly to those applicants thereafter admitted to the home, making their subsequent admission a binding *contract* between the home and themselves with relation to the disposition of all personal property belonging to them at death without heirs at law and intestate. And the 1910 act itself recognized that to accomplish this result the application form had to be changed to *incorporate in it the contract* of the parties. * * *" (Emphasis supplied)

Any implication that the 1902 Pension Act automatically created a contract by the mere presence of the pensioner in the home is vigorously assailed in the dissent which points out that an insane person cannot be legally bound either by his own or his guardian's act without authority of the court.

Nor did the McGhee case, 149 Misc. 713, 268 N.Y.S. 79, affirmed 239 App. Div. 763, 264 N.Y.S. 903, affirmed 262 N.Y. 686, 188 N.E. 124, support the sweeping statement in the Bonner case. In the McGhee case the veteran had signed an agreement.

In *Gonsky's Estate*, (1952) 79 N. D. 123, 55 N.W. (2d) 60, cited by petitioner, the decendent's entire estate consisted of federal retirement disability payments. It also appears that a guardian had been appointed for this mentally ill veteran prior to his "commitment" to the Veterans' hospital. Obviously, 38 U.S.C. § 450 governed the reversion of the unexpended benefit payments. The case is readily distinguishable from the case at bar where Warpouske's estate in controversy was derived from his deceased brother's estate. Again no guardian was appointed until after Warpouske was transferred to the Veterans' hospital and then only for his estate and not for his person. Nor was there ever any order of court directing Warpouske's transfer or commitment to the Veterans' hospital.

Cited also by petitioner is *In re Skriziszouski's Estate*, (1955) 382 Pa. 634, 116 A. (2d) 841. Except for $50, the entire estate consisted of pension benefits. There is nothing in the case to show that the deceased had not validly been confined or committed to the veterans' facility where he died. The narrow question was whether the commonwealth was an "heir." The case is indeterminative as an authority for the self-operation of the statute.

The view that § 17-17j are self-executing as dispensing with probate was severely criticized in *United States v. Security-First National Bank of Los Angeles*, 130 F. Sup. 521. The court pointed out that probate and the determination of heirship are matters of state and not federal procedure and that under the Tenth Amendment

of the Federal Constitution such powers are not delegated to the United States but are reserved to the states.

While the cases cited by petitioner may seem to lend support to the thesis of the self-operating effect of the statute, an analysis dispels their structure. In them it appears that courts apparently failed to take into consideration the important distinction in the basic theories underlying the respective provisions of 38 U.S.C. 17-17j and 38 U.S. C. § 450. On the other hand, the great majority of the cases rest their decisions under 38 U.S.C. §§ 17-17j upon contract. Here the contractual nature of the statute intended by Congress may be garnered not only from the language of the Act itself but is found clearly expressed in the legislative history of the Act.

(4) *Administrative practice.* The administrative practice of the Veterans' Administration over the years, in conformity with the statute, lends support to the interpretation of the statute as contractual in its operation. The admission forms to be executed by veterans upon their admission to a veterans' facility have contained an express agreement to or acknowledgment of the provisions of the statute concerning the vesting of the veteran's personal property in the United States upon his death in the facility intestate and without heirs, as is exemplified by the agreement forms set forth in the footnotes of petitioner's brief on writ of certiorari at pages 8 and 22.

Neuropsychiatric patients in Veterans' Facilities.

It is urged that because of the great many veterans admitted to veterans' facilities each year suffering from

neuropsychiatric impairments Congress intended the Act to be self-operating rather than contractual in nature. The intention of Congress in enacting this legislation is, of course, unmistakably shown by its legislative history as set forth in 87 Congr. Rec. 5202-5204, supra, thus removing the question of the legislative intent from the realm of construction. Again, because the great majority of mentally incompetent veterans dying in a veterans' facility are survived by heirs, the Act would not be applicable to them. Also, of such mentally incompetent veterans, in all probability, only a comparative few would be possessed of estates. Of these, no doubt, the greater number would be under a general or personal guardianship or would have been committed to the veterans' facility pursuant to some commitment order of court. Only in unusual cases, such as in the Warpcuske case at bar, would a mentally incompetent veteran possessed of a sizeable estate die in a veterans' facility intestate and without heirs and without a commitment order of court or personal or general guardian to act for him in his admission to the veterans' facility.

II

Inasmuch as the provisions of 38 U.S.C. §§ 17-17j are contractual, the question whether Congress can enact a self-operating statute in the area of veterans' estates, unhampered by the provisions of the Fifth and Tenth Amendments of the Constitution, becomes moot and hypothetical.

Petitioner has presented as its second question the query whether Congress can constitutionally provide for

the automatic vesting of a veterans' personal property, upon his death intestate and without heirs in a veterans' facility, as a condition to the furnishing of care or treatment to him in the facility.

In view of the fact that it clearly appears that the Act was intended to operate contractually, the question propounded as to the power of Congress to provide self-executing legislation becomes moot and hypthetical. We understand that it is the considered practice of this Court not to pass upon abstract, hypothetical or contingent questions: *Alabama State Federation of Labor v. McAdory*, 325 U.S. 450, 461, 89 L. Ed. 1725, 1734, and cases cited.

However, the right to pass laws regulating probate and the succession to decedents' estates has traditionally been recognized as a power reserved to the states by the Tenth Amendment of the Constitution. *Mager v. Grima*, 49 U.S. 490, 493, 12 L. Ed. 1168; and see *United States v. Security-First National Bank of Los Angeles*, supra (130 F. Sup. at 523). While the Tenth Amendment has all but joined the ranks of the Ninth Amendment as a forgotten amendment, yet it remains an abiding provision in that document on equal footing with its other provisions. Though Congress in the exercise of its granted powers may use all appropriate means plainly adapted to that end (*McCulloch v. Maryland*, 4 Wheat. 316, 421), the Supremacy clause is not boundless and the Tenth Amendment was expressly added to the Constitution for the purpose of reserving certain powers to the states.

Concerning the Fifth Amendment, the Oregon court

referred to *Heiner v. Donnan*, 280 U.S. 312, 76 L. Ed. 772, in which a statutory conclusive presumption was regarded as a taking of property violative of the Amendment and an attempt by legislative fiat to enact into existence a fact not actually existing. After discussion of the presumption and the nature of 38 U.S.C. 17-17j, the Oregon court observed that Congress did not intend to apply the conclusive presumption to appropriate the property of a helpless veteran in a situation as here presented (R. 42-44). In view of the contractual nature of the statute, the "conclusive presumption" provision does not become operative as to mentally incompetent or incapacitated veterans unable to contract and who are not under general or personal guardianship or committed to the Veterans' facility by an order of court. While under the circumstances no Fifth Amendment problem may be involved, the court was nevertheless correct in its conclusion that the presumption was not applicable.

Since the provisions of 38 U.S.C. 17-17j were intended to be contractual in their operation and not operative as to mentally incompetent or incapacitated veterans unable to contract, the question whether Congress can constitutionally provide for the automatic vesting of an incompetent veteran's property by a self-executing statute becomes moot.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the Oregon Supreme Court should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 329.—October Term, 1960.

United States, etc., et al., Petitioners, v. Oregon. } On Writ of Certiorari to the Supreme Court of Oregon.

[May 29, 1961.]

Mr. Justice Black delivered the opinion of the Court.

Adam Warpouske, an Oregon resident, died in a United States Veterans' Administration Hospital in Oregon without a will or legal heirs, leaving a net estate composed of personal property worth about $13,000. Oregon law provides that such property shall escheat to the State.[1] A United States statute, on the other hand, provides that when a veteran dies without a will or legal heirs in a veterans' hospital, his personal property "shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund . . . ."[2] In reliance upon these provisions of their respective statutes, both the State of Oregon and the Government of the United States filed claims for Warpouske's estate in the Oregon probate court having jurisdiction of the matter.

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[1] Ore. Rev. Stat., § 120.010 provides: "Immediately upon the death of any person who dies intestate without heirs, leaving any real, personal or mixed property, interest or estate in this state, the same escheats to and vests in the state, subject only to the claims of the creditors and as provided in ORS 120.060 to 120.130; and the clear proceeds derived therefrom shall be paid into and become a part of the Common School Fund of this state and be loaned or invested by the State Land Board, as provided by law."

[2] 38 U. S. C. § 17.

Recognizing that the federal statute, if applicable and valid, would make the claim of the United States paramount, the State attacked the Government's reliance upon that statute on two grounds: first, it urged that the federal statute did not apply to this case on the theory that its provisions depended upon the Government's having made a valid contract with the veteran prior to his death and that Warpouske had made no such contract because he had been mentally incompetent to do so when he entered the hospital and at all times thereafter up to his death; and, secondly, it urged that the federal statute, even if applicable, was invalid because it pertains to the devolution of property, a matter contended to have been wholly reserved to the States by the Tenth Amendment.

After hearings, the probate court found as a fact that Warpouske had been unable to enter into a valid contract with the Government because of his mental incompetence. That court then accepted the State's interpretation of the federal statute as requiring a valid contract as a prerequisite to its application and concluded that since such a contract could not, in this case, have been made, the State was entitled to Warpouske's property by virtue of its escheat law. On appeal, the State Supreme Court affirmed on the same grounds.[3] Because of the importance of this question of federal statutory construction and an alleged conflict between this decision and decisions previously made by other state courts of final jurisdiction,[4] we granted certiorari.[5]

Since we accept the findings of the two state courts that Warpouske could not and did not enter into a con-

[3] 70 Ore. 1267, 352 P. 2d 539.

[4] The conflict alleged is with the decisions in *Skriziszouski Estate*, 382 Pa. 634, 116 A. 2d 841; and *In re Gonsky's Estate*, 79 N. D. 123, 55 N. W. 2d 60.

[5] 364 U. S. 877.

tract to leave his property to the United States, the crucial question is whether the Government can prevail in the absence of such a contract. We hold that it can on the grounds that the federal statute relied upon does not require a contract and that this statute does not violate the Tenth Amendment.

The controlling provision was passed in 1941 as an amendment to the Sundry Appropriations Act of 1910.[6] The 1910 Act quite plainly and unequivocally provided that the admission of an applicant to a veterans' home should "be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will . . . shall vest in and become the property of the said Board of Managers for the sole use and benefit of the post fund of said home . . . ." The contractual nature of these provisions of the 1910 Act was clear and, indeed, we expressly recognized that fact when the question of the validity of the Act was brought before this Court.[7]

The 1910 Act was greatly amplified, however, by the amendments adopted in 1941 [8] and the central provision

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[6] 36 Stat. 703, 736.

[7] "In passing the Act of June, 1910, Congress merely directed the terms and conditions under which veterans, consistently with state law, can obtain admittance to Homes built, maintained and operated by the government for the benefit of veterans. Homes for the aged, needy, or infirm, in return for the benefits bestowed by them, generally receive some benefit from any property or estates of their members." *United States* v. *Stevens*, 302 U. S. 623, 627.

[8] 55 Stat. 868, 38 U. S. C. § 17 *et seq.*

of the Act, quoted above, was significantly changed. Section 1 (1) of the new Act restates this provision without reference to the word "contract," providing simply that when a veteran dies "while a member or patient in any facility, or any hospital while being furnished care or treatment," all his personal property "not disposed of by will or otherwise, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund . . . ." [9] The Act then goes on to supplement this basic provision with other provisions that are drawn in the language of contract. But these provisions must be read in the context of § 1 (2) of the Act which provides that the death of a veteran in a veterans' hospital "shall give rise to a conclusive presumption of a valid contract." [10] Read in this context, the language of contract which appears in these other provisions of the Act is not at all inconsistent with the provision for automatic vesting without a contract in § 1 (1). Quite the contrary, it seems plain to us that these "contractual" provisions were included in the Act for the purpose of reinforcing rather than detracting from the provisions of § 1 (1)—the thought apparently being that there was some chance that the Act would be attacked as unconstitutional and that it would consequently be advisable to include alternative bases upon which it could be upheld.[11]

This natural construction we give to § 1 (1) makes it fit well in the pattern of legislation dealing with this sub-

[9] 38 U. S. C. § 17.

[10] 38 U. S. C. § 17a.

[11] These fears doubtless arose, in part at least, from the fact that the Circuit Court of Appeals had, in the *Stevens* case, *supra*, declared even the milder provisions of the 1910 Act unconstitutional under the Tenth Amendment, *Stevens* v. *United States*, 89 F. 2d 151, a holding ultimately reversed by this Court.

ject. The solicitude of Congress for veterans is of long standing.[12] Veterans' pensions, homes, hospitals and other facilities have been supplied on an ever-increasing scale. Many veterans, as did the deceased veteran here, have had to depend upon these benefits for long periods of their lives. Warpoueke, for example, appears to have spent more than ten years of his life, at various intervals from time to time, in veterans' homes and hospitals throughout the country. These were the only homes he had at those times. The congressional plan here is that whatever little personal property veterans without wills or kin happen to leave when they die in veterans' homes and hospitals should be paid into the General Post Fund, to be used for the recreation and pleasure of other ex-service men and women who have to spend their days in veterans' homes and hospitals. This idea was expressed by Representative Jennings during the discussion of the 1941 Act on the floor of the House: "And would it not be much better to let that money go into a fund that would inure to the benefit of other veterans than to let . . . it go into a fund under the escheat laws of [a] State?" [13]

Having concluded that the provisions of § 1 (1) are clear and unequivocal on their face, we find no need to resort to the legislative history of the Act.[14] Since the State has placed such heavy reliance upon that history, however, we do deem it appropriate to point out that this history is at best inconclusive. It is true, as the State points out, that Representative Rankin, as Chairman of the Committee handling the bill on the floor of the House,

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[12] See the Brief History of Legislation Pertaining to Veterans' Benefits, 38 U. S. C. A. 1.

[13] 87 Cong. Rec. 5203–5204.

[14] Cf. *United States* v. *Bowen*, 100 U. S. 508, 513–514; *National Home* v. *Wood*, 299 U. S. 211, 216.

expressed his view during the course of discussion of the bill on the floor that the 1941 Act would not apply to insane veterans incompetent to make valid contracts.[15] But such statements, even when they stand alone, have never been regarded as sufficiently compelling to justify deviation from the plain language of a statute. They are even less so here for there is powerful countervailing evidence as to the intention of those who drafted the bill. The bill was drawn up and sent to the Speaker of the House in the very form in which it was passed by the Veterans' Bureau itself.[16] And that Bureau, we are told, has consistently interpreted the 1941 Act as making the sanity or insanity of a veteran who dies in a veterans' hospital entirely irrelevant to the determination of the Government's rights under the Act.

We see no merit in the challenge to the constitutionality of § 1 (1) as construed in this natural manner. Congress undoubtedly has the power—under its constitutional powers to raise armies and navies and to conduct wars—to pay pensions, and to build hospitals and homes for veterans. We think it plain that the same sources of power authorize Congress to require that the personal property left by its wards when they die in government facilities shall be devoted to the comfort and recreation of other ex-service people who must depend upon the Government for care. The fact that this law pertains to the devolution of property does not render it invalid.[17]

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[15] 87 Cong. Rec. 5203.

[16] See H. R. Rep. No. 609, 77th Cong., 1st Sess., pp. 1-2.

[17] See, *e. g.*, *Kolovrat* v. *Oregon*, — U. S. —. This was also implicit in the holding in *United States* v. *Stevens*, 302 U. S. 623. See n. 11, *supra*. Cf *Hines* v. *Lowery*, 305 U. S. 85, in which this Court rejected the contention that the Federal Constitution does not confer any authority upon Congress to deal with mental incompetents.

Although it is true that this is an area normally left to the States, it is not immune under the Tenth Amendment from laws passed by the Federal Government which are, as is the law here, necessary and proper to the exercise of a delegated power.[15]

The judgment of the Oregon Supreme Court is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

Reversed

[15] See, *e. g.*, *Case* v. *Bowles*, 327 U. S. 92; *Oklahoma* v. *Atkinson Co.*, 313 U. S. 508; *United States* v. *Darby*, 312 U. S. 100.

SUPREME COURT OF THE UNITED STATES

No. 329.—October Term, 1960.

United States, etc., et al., Petitioners, v. Oregon.	On Writ of Certiorari to the Supreme Court of Oregon.

[May 29, 1961.]

Mr. Justice Douglas, with whom Mr. Justice Whittaker concurs, dissenting.

I do not see how this decedent's estate can constitutionally pass to the United States. The succession of real and personal property is traditionally a state matter under our federal system. *Mager* v. *Grima*, 8 How. 490, 493–494. That tradition continues. *United States* v. *Burnison*, 339 U. S. 87, 91–92; *Clark* v. *Allen*, 331 U. S. 503, 517; *Irving Trust Co.* v. *Day*, 314 U. S. 556, 562; *Lyeth* v. *Hoey*, 305 U. S. 188, 193. An individual can contract away his assets—making the United States the promisee—and the contract will be enforced, provided it is valid under state law. *United States* v. *Stevens*, 302 U. S. 623, 627. It may be that an action in *quantum meruit* would lie against the estate of a person who, though utterly incompetent as Adam B. Warpouske concededly was, received treatment at a federal hospital.[1] It may be that the United States could appropriate all unexpended funds from federal pensions or federal insurance policies in exchange for the services rendered an incompetent. See *United States* v. *Hall*, 98 U. S. 343; *Wissner* v. *Wissner*, 338 U. S. 655; cf. *Miller Music Corp.* v. *Daniels, Inc.*, 362 U. S. 373. The power of Congress to

[1] See Restitution, Restatement of the Law, Am. L. Inst. (1937), § 114; 5 Corbin on Contracts (1951) § 1109.

the Veteran's Administration is authorized to administer the estate, paying creditors' claims, if presented within designated times, and granting them the preference and priorities prescribed by local law. § 4.

We know that while the Act is based on "a conclusive presumption" that a contract to assign the property to the United States was made, there was in fact no contract in this case. During the period of Warpouske's hospitalization—from March 1, 1956, to March 19, 1956, the day of his death—he was either comatose or semicomatose.[3] We deal with a presumption that is contrary to the fact (cf. *Tot v. United States*, 319 U. S. 463). We have then a case involving the power of Congress to provide for the administration of the estate of a deceased veteran where he has in fact made no assignment of it to the Federal Government. To what power is that necessary and proper?

Only recently we warned against an expansive construction of the Necessary and Proper Clause. We stated that it is "not itself a grant of power but a *caveat* that the Congress possesses all the means to carry out" the powers specifically granted. *Kinsella v. Singleton*, 361 U. S. 234, 247. Powers not given "were reserved," as Madison said. VI Writing of James Madison (Hunt ed.) 390. And "no powers were given beyond those enumerated in the Constitution, and such as were fairly incident to them." *Ibid.*

Veterans or anyone else may make the United States a beneficiary of their estate, absent a state law that precludes it. See *United States* v. *Burnison*, *supra*. But if it is "fairly incident" to raising and support-

[3] Adam Warpouske spent a large part of his life in Veterans' Hospitals, especially during the years from 1930 to 1945. (The record also shows that he received care in the facilities of various states.) But the claim to administer his personal property arises solely from "the fact of death" in a Veteran's Hospital.

ing armies and navies and conducting wars for the United States to take over the administration of the personal property of veterans who die intestate. I see no reason why Congress cannot take over their real estate too. I see no reason why, if the United States can go as far as we allow it to go today, it cannot supersede any will a veteran makes and thus better provide for the comfort, care, and recreation of other ex-service men and women who are dependent on the United States for care. And the more money the Federal Government collects for veterans the better the care they will receive. No greater collision with state law would be present where Congress took realty or displaced an entire will than here. Oregon's law providing for escheat is as explicit as her law providing for the administration of the estates of deceased people. If a contract between the United States and an utterly incompetent person can be conclusively presumed to exist when the incompetent dies intestate, it can be where he leaves a will. If it can be conclusively presumed in case of a veteran, it can be conclusively presumed in case of any federal employee, in case of any federal officeholder, in case of any federal pensioner. Of course Congress cannot be expected to use this vast new power to the extreme. But we—unlike England—live under a written Constitution that limits powers, not entrusting the Constitution to the conscience of the legislative body.

The Tenth Amendment does not, of course, dilute any power delegated to the national government. That is one face of the truism that runs through our decisions. *United States* v. *Darby*, 312 U. S. 100, 124; *Oklahoma* v. *Atkinson Co.*, 313 U. S. 508, 534; *Case* v. *Bowles*, 327 U. S. 92, 101. But when the Federal Government enters a field as historically local as the administration of decedent estates, some clear relation of the asserted power to one of the delegated powers should be shown. At times the

exercise of a delegated power reaches deep into local problems. *Wickard* v. *Filburn*, 317 U. S. 111, allowed the commerce power to extend to home-grown and home-used wheat, because total control was essential for effective control of the interstate wheat market. But there is no semblance of likeness here. The need of the Government to enter upon the administration of veterans' estates—made up of funds not owing from the United States—is no crucial phase of the ability of the United States to care for ex-service men and women or to manage federal fiscal affairs.

Today's decision does not square with our conception of federalism. There is nothing more deeply imbedded in the Tenth Amendment, as I read history, than the disposition of the estates of deceased people. I do not see how a scheme for administration of decedents' estates of the kind we have here can possibly be necessary and proper to any power delegated to Congress.

Raising money by borrowing or by taxing are explicitly provided for in Art. I, § 8. Raising money by appropriating assets of those who have a relationship with the Federal Government (as most people do today) is not among the enumerated powers. At bottom of the present statute, as the Court points out, is a desire to make those who use a Veteran's Hospital help finance its operations.[4] Congress can set rates for services rendered; it

[4] The inspiration for this law, as seen from the legislative history (H. R. Rep. No. 609, 77th Cong., 1st Sess.; S. Rep. No. 900, 77th Cong., 1st Sess.) was the Veterans' Administration, a fact which perhaps makes relevant the following observation: 'Politicians and taxpayers have assumed (with occasional phases of doubt) that a rising total in the number of civil servants must reflect a growing volume of work to be done. Cynics, in questioning this belief, have imagined that the multiplication of officials must have left some of them idle or all of them able to work for shorter hours. But this is a matter in which faith and doubt seem equally misplaced. The fact is that the number of the officials and the quantity of the work are not related to

can obtain from patients assignments of assets to the United States; it can induce and encourage people to make these hospitals beneficiaries under their wills. But I do not see how it is possible for the United States to take a man's property without his consent when the United States is not a creditor in the accepted sense. The only constitutional way in which that can be done is by taxation or by condemnation. This law as applied is indeed a levy that has no support in the Constitution; and it makes a serious inroad on the Tenth Amendment. With all deference, I dissent.

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each other at all. The rise in the total of those employed is governed by Parkinson's Law and would be much the same whether the volume of the work were to increase, diminish, or even disappear. The importance of Parkinson's Law lies in the fact that it is a law of growth based upon an analysis of the factors by which that growth is controlled." Parkinson, Parkinson's Law (1957), pp. 3–4.